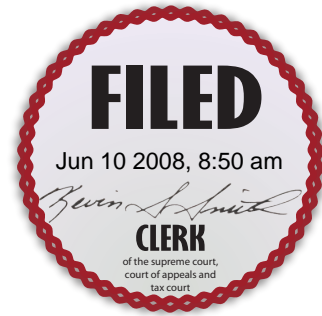


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JAY RODIA
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SHELLEY JOHNSON
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

SEAN MIAL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0712-CR-1019

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven R. Eichholtz, Judge
Cause No. 49G23-0708-FC-158505

June 10, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Sean Mial appeals his conviction for Possession of Cocaine, as a Class C felony,¹ arguing that it was fundamental error for certain evidence to be admitted because his arrest was not based on probable cause. We affirm.

Facts and Procedural History

On August 3, 2007, Detective James Vaughn of the Indianapolis Metropolitan Police Department was investigating a rash of robberies when a description of the suspects was broadcast to police in Marion and Hamilton Counties. Officers of the Fishers Police Department apprehended four suspects, including Mial, on North Allison Road in Fishers. In addition to being a suspect in the robberies under investigation, Mial had been placed under arrest by the Fishers police officers for driving while his license was suspended. While Detective Vaughn was present, the suspects were read their Miranda rights. Detective Vaughn and three other officers transported the four suspects to the City-County Building in Indianapolis. As Detective Vaughn and Mial entered an elevator, Mial dropped a bag containing a white powdery substance, later identified as cocaine. Detective Vaughn asked Mial if he had dropped the bag to which Mial responded affirmatively. Detective Vaughn recovered the bag containing 7.3105 grams of cocaine and took Mial to conduct a recorded statement in which Mial admitted to dropping the cocaine.

The State charged Mial with Possession of Cocaine, as a Class C felony. After a bench trial, Mial was found guilty as charged, and the trial court sentenced him to four years imprisonment.

Discussion and Decision

Mial contends the trial court erred in admitting the cocaine and Detective Vaughn's testimony because it was obtained in violation of the Fourth Amendment prohibiting illegal searches and seizures. Specifically, he asserts the record does not demonstrate that his arrest in Fishers was supported by probable cause, making his seizure illegal.

A trial court has broad discretion in ruling on the admissibility of evidence, and we will only reverse a trial court's ruling on admissibility of evidence when the trial court has abused its discretion. Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). However, failure to object to the admission of evidence at trial results in waiver of the issue of admissibility on appeal. Kubsch v. State, 784 N.E.2d 905, 923 (Ind. 2003). Here, Mial concedes that he did not object to its admission at trial. There also was no pre-trial motion to suppress based on this argument.

In an attempt to evade waiver, Mail couches his argument in terms of fundamental error. However, our Supreme Court has held that the admission of evidence obtained in violation of the defendant's constitutional rights to be protected against unlawful searches and seizures does not elevate the issue to the status of fundamental error. Swinehart v. State, 268 Ind. 460, 465-67, 376 N.E.2d 486, 491 (1978). Therefore, we will not review the admission of the challenged evidence for fundamental error.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.

¹ Ind. Code § 35-48-4-6(b).